



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:

Metzgermeister & Research Corp.,

Respondent

Docket No. CWA-02-2013-3453

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**ORDER TERMINATING PROCEEDINGS
BEFORE THE ADMINISTRATIVE LAW JUDGE**

On June 21, 2013, Jose C. Font ("Complainant"), Director of the Caribbean Environmental Protection Division, United States Environmental Protection Agency ("EPA" or "Agency"), filed an Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(2)(B). On September 5, 2013, this matter was transmitted to this Tribunal and the parties were offered to participate in an alternative dispute resolution ("ADR") process to facilitate the settlement of this matter. After two weeks had passed and neither party responded to the offer to participate in ADR, I was designated to preside in this proceeding on September 25, 2013.¹

On September 30, 2013, I issued a Prehearing Order in this case, establishing filing deadlines for each party with regard to the prehearing exchange of information. Pursuant to that Order, on October 28, 2013, Complainant filed a Status Report summarizing the status of settlement negotiations between the parties. The Prehearing Order required Complainant to file its Prehearing Exchange by November 15, 2013. However, on November 25, 2013, Complainant filed a Motion for Leave to File Prehearing Exchange Out of Time, First Request for Extension of Time to File an Executed Consent Agreement and Final Order or Complainant's Prehearing Exchange and to Stay the Proceedings ("Motion 1"), requesting a 60 day extension to file either its prehearing exchange or a Consent Agreement and Final Order ("CAFO") and representing that Respondent's representative was contacted and did not object to the Motion. In the Motion it was noted that Complainant missed the November 15, 2013 deadline for filing its Prehearing Exchange "[d]ue to an oversight and other professional engagements," specifically counsel was on travel to attend a training class the week before the deadline. Mot. 1, at 1. Further, it was

¹ The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 govern such proceeding.

stated that the parties are “actively engaged in good faith negotiations” towards settlement and Respondent is working to produce documentation supporting its inability to pay the proposed penalty. *Id.* at 2–3. It was further represented that “[t]he Parties’ goal is to reach an agreement in principle and file an executed Consent Agreement and Final Order (CAFO) within the next sixty (60) days.” *Id.* at 2. By Order dated November 25, 2013, I granted the parties the requested sixty (60) day extension, establishing a revised set of deadlines that included the following: a deadline of January 17, 2014, by which to file a fully executed CAFO or Complainant’s Initial Prehearing Exchange; a deadline of February 7, 2014, by which to file Respondent’s Prehearing Exchange; and a deadline of February 21, 2014, by which to file Complainant’s Rebuttal Prehearing Exchange.

On January 16, 2014, Complainant filed its Initial Prehearing Exchange.² Respondent did not file its Prehearing Exchange. On February 21, 2014, the parties filed a Joint Status Report and Request to Stay the Proceedings, or in the Alternative, Respondent’s Prehearing Exchange Due Date (“Motion 2”). Acknowledging the fact that Respondent failed to submit its Prehearing Exchange, but without explanation as to the reason(s) for such failure, the parties jointly represented that they continued to be “actively participating in good faith negotiations, including conference calls, in order to expedite a final settlement of this matter.” Mot. 2, at 1. Complainant represented that “EPA expects to finalize the analysis of financial documents” related to Respondent’s inability to pay claim “during the next two weeks” and upon such completion, the “Parties will meet to finalize the settlement negotiations that are undergoing.” *Id.* at 1–2. The parties further represented that their goal “is to reach an agreement in principle and file an executed [CAFO] with the next sixty (60) days, by April 22, 2014.” *Id.* at 2. In consideration of Agency policy strongly supporting settlement and the parties’ efforts toward such settlement of this matter, I granted the parties’ request by Order dated March 6, 2014, affording them sixty (60) additional days, until April 22, 2014, to submit a Consent Agreement and Final Order or Respondent’s Prehearing Exchange.

Five days before the deadline, on April 17, 2014, the parties filed a Joint Status Report and Request to Stay the Proceedings, or in the Alternative, Respondent’s Prehearing Exchange Due Date (“Motion 3”), seeking an additional forty-five (45) days, until June 6, 2014, to file a CAFO or Respondent’s prehearing information. In support, Complainant represented that it has “been working in analyzing the financial documentation submitted by Respondent” and “[t]he Parties are now actively engaged in good faith negotiations, to agree on a cash penalty amount in order to reach a final settlement dispositive of all matters asserted in the Complaint.” Mot 2, at 1. In my Order dated April 28, 2014, I commended the parties for their good faith attempts to

² Complainant’s Initial Prehearing Exchange did not contain proof of public notice pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), because Complainant was in the process of confirming that notice had been provided. On February 18, 2014, Complainant filed a Motion to Supplement Complainant’s Initial Prehearing Exchange, seeking to supplement its Initial Prehearing Exchange with proof that the public was notified of this administrative action pursuant to Section 309(g) of the Clean Water Act, which I subsequently granted.

settle this matter, but also expressed concern regarding the length of time that has expired since commencement of this action in June 2013. I noted that the parties had been provided a significant amount of time to date to resolve this matter. As such, I granted, in part, the parties' request and afforded them an additional thirty (30) days, by May 22, 2014, to file a CAFO or Respondent's Prehearing Exchange.

Respondent has yet to file its Prehearing Exchange. In response to inquiry by a staff member of this office on May 28, 2014, the parties submitted a Status Report and Request for Additional Time to File a Fully Executed Consent Agreement and Final Order, in which the parties include an attachment of the "final CAFO including Respondent's signature." The parties further represent that "Complainant's concurrence and approval process of the CAFO is undergoing" requiring "the review of several EPA officers" located in Puerto Rico and New York as well as the signature of the Regional Administrator.

I commend the parties in their efforts toward successful settlement of this matter. I also note that there is no further need for the undersigned to preside in this matter. Cases are referred to the Office of Administrative Law Judges solely for the purpose of providing the respondent with the right to a hearing before an Administrative Law Judge, consistent with the applicable statutes and the Administrative Procedure Act. The parties are deemed to have waived the right to hearing, as the parties have reported that they have reached an agreement to settle this matter and that Respondent has signed a CAFO.

Accordingly, this proceeding before the undersigned is hereby deemed **CLOSED** as of this date and the parties' Request for Additional Time to File a Fully Executed Consent Agreement and Final Order is **DENIED** as moot.

SO ORDERED.



Christine D. Coughlin
Administrative Law Judge

Dated: May 29, 2014
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Order Terminating Proceedings Before the Administrative Law Judge, issued by Christine D. Coughlin, Administrative Law Judge, in Docket No. CWA-02-2013-3453, were sent to the following on this 29th day of May 2014, in the manner indicated:



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Dated: May 29, 2014
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